

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-04/09-202
)
 Appeal of)

The petitioner is the mother of one child in the custody of the Department for Children and Families, Family Services Division pursuant to a Family Court Order in a CHINS (child in need of supervision) action. The petitioner is the respondent in a TPR (termination of parental rights) case in Family Court. The petitioner is seeking the return of her daughter. The Department has asked the Board to dismiss petitioner's case based on lack of subject matter jurisdiction.

The petitioner filed her appeal on April 7, 2009. The Department filed a Motion to Dismiss for Lack of Jurisdiction on April 20, 2009. The parties addressed the Department's Motion during a telephone status conference held on May 6, 2009.

There is no dispute that the petitioner's daughter is in the custody of the Department pursuant to a Vermont Family

Court order in the case of In Re: S.D., Docket No. 176-9-07 Frjv.

The Board has repeatedly ruled that the Board cannot hear cases regarding the placement of children who are in the custody of the Department. Fair Hearings 21,092; 19,952; 18,351; 17,726; and 17,670.

The Board is bound by 33 V.S.A. 5503 which states the Family Court (juvenile court) has "exclusive jurisdiction over all proceedings concerning any child who is...a child in need of care or supervision...". (emphasis added).

Based on the above, the Board cannot review any of the decisions made by the Family Court regarding the custody of petitioner's daughter.

ORDER

The Department's Motion to Dismiss the petitioner's appeal is granted.

#